

February 7, 2003

2003-07

Proposed Amendments of Rules
3.973, 3.974, 3.975, and 3.977
of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering amendments of Rules 3.973, 3.974, 3.975, and 3.977 of the Michigan Court Rules, which were adopted February 4, 2003, to be effective May 1, 2003. Before determining whether the proposals should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposals. The Court welcomes the views of all who wish to address the proposals or to suggest alternatives. The proposals also will be considered by the Court at a public hearing. Notice of future public hearings will be provided by the Court and posted on the Court's website, www.courts.michigan.gov/supremecourt.

Publication of these proposals does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposals in their present form.

[Two alternative proposals are under consideration; changes are shown
from the language of the new rules that will take effect May 1, 2003.]

ALTERNATIVE A

Rule 3.973 Dispositional Hearing

(A) - (G) [Unchanged.]

(H) Supplemental Petition Alleging Allegations of Additional Abuse or Neglect. The court may take action on a supplemental petition that alleges additional abuse or neglect, as defined in MCL 722.622(e) and (f), of a child who is under the jurisdiction of the court.

(1) ~~Proceedings on a~~ A supplemental petition seeking termination of parental rights ~~on the basis of allegations of additional abuse or neglect, as defined in MCL 722.622(e) and (f), of a child who is under the jurisdiction of the court are~~ is governed by MCR 3.977.

- (2) ~~Where there is no request for~~ A supplemental petition that does not seek the termination of parental rights, proceedings regarding allegations of additional abuse or neglect, as defined in MCL 722.622(e) and (f), of a child who is under the jurisdiction of the court, including those made under MCL 712A.19(1), are is governed by MCR 3.974 for a child who is at home or MCR 3.975 for a child who is in foster care. At a hearing on the supplemental petition, the allegations of additional abuse or neglect must be established by legally admissible evidence.

Rule 3.974 Post-Dispositional Procedures: Child at Home

(A)-(B) [Unchanged.]

(C) Dispositional Review Hearing; Procedure.

- (1) If the child is in placement pursuant to subrule (B), the dispositional review hearing must commence no later than 14 days after the child is placed by the court, except for good cause shown. Except as provided in subrule (C)(2), the hearing must be conducted in accordance with the procedures and rules of evidence applicable to a dispositional hearing.
- (2) If the hearing is on a supplemental petition filed under MCR 3.973(H), the allegations of additional abuse or neglect in the supplemental petition must be established by legally admissible evidence.

Rule 3.975 Post-Dispositional Procedures: Child in Foster Care

(A)-(D) [Unchanged.]

(E) Procedure.

- (1) Except as provided in subrule (E)(2), ~~D~~dispositional review hearings must be conducted in accordance with the procedures and rules of evidence applicable to the initial dispositional hearing. The report of the agency that is filed with the court must be accessible to the parties and offered into evidence. The court shall consider any written or oral information concerning the child from the child's parent, guardian, legal custodian, foster parent, child caring institution, or relative with whom a child is placed, in addition to any other relevant and material evidence at the hearing. The court, on request of a party or on its own motion, may accelerate the hearing to consider any

element of a case service plan.

- (2) If the hearing is on a supplemental petition filed under MCR 3.973(H), the allegations of additional abuse and neglect in the supplemental petition must be established by legally admissible evidence.

(F) - (H) [Unchanged.]

ALTERNATIVE B

Rule 3.973 Dispositional Hearing

(A) - (G) [Unchanged.]

- (H) Supplemental Petition Alleging Allegations of Additional Abuse or Neglect. The court may take action on a supplemental petition that alleges additional abuse or neglect, as defined in MCL 722.622(e) and (f), of a child who is under the jurisdiction of the court.

- (1) ~~Proceedings on a A~~ supplemental petition seeking termination of parental rights ~~on the basis of allegations of additional abuse or neglect, as defined in MCL 722.622(e) and (f), of a child who is under the jurisdiction of the court are~~ is governed by MCR 3.977.
- (2) ~~Where there is no request for A~~ supplemental petition that does not seek the termination of parental rights, ~~proceedings regarding allegations of additional abuse or neglect, as defined in MCL 722.622(e) and (f), of a child who is under the jurisdiction of the court, including those made under MCL 712A.19(1), are~~ is governed by MCR 3.974 for a child who is at home or MCR 3.975 for a child who is in foster care. At a hearing on the supplemental petition, the allegations of additional abuse or neglect must be established by legally admissible evidence. If the court concludes that the allegations of additional abuse or neglect are of such a nature that fairness to the respondent or the interests of justice require, the court may direct that there be a jury determination of the truth of those allegations.

Rule 3.974 Post-Dispositional Procedures: Child at Home

(A)-(B) [Unchanged.]

(C) Dispositional Review Hearing; Procedure.

- (1) If the child is in placement pursuant to subrule (B), the dispositional review hearing must

commence no later than 14 days after the child is placed by the court, except for good cause shown. Except as provided in subrule (C)(2), the hearing must be conducted in accordance with the procedures and rules of evidence applicable to a dispositional hearing.

- (2) If the hearing is on a supplemental petition filed under MCR 3.973(H), the allegations of additional abuse or neglect in the supplemental petition must be established by legally admissible evidence.

Rule 3.975 Post-Dispositional Procedures: Child in Foster Care

(A)-(D) [Unchanged.]

(E) Procedure.

- (1) Except as provided in subrule (E)(2), ~~D~~dispositional review hearings must be conducted in accordance with the procedures and rules of evidence applicable to the initial dispositional hearing. The report of the agency that is filed with the court must be accessible to the parties and offered into evidence. The court shall consider any written or oral information concerning the child from the child's parent, guardian, legal custodian, foster parent, child caring institution, or relative with whom a child is placed, in addition to any other relevant and material evidence at the hearing. The court, on request of a party or on its own motion, may accelerate the hearing to consider any element of a case service plan.

- (2) If the hearing is on a supplemental petition filed under MCR 3.973(H), the allegations of additional abuse and neglect in the supplemental petition must be established by legally admissible evidence.

(F) - (H) [Unchanged.]

Rule 3.977 Termination of Parental Rights

(A)-(E) [Unchanged.]

- (F) Termination of Parental Rights on the Basis of Different Circumstances. The court may take action on a supplemental petition that seeks to terminate the parental rights of a respondent over a child already within the jurisdiction of the court on the basis of one or more circumstances

new or different from the offense that led the court to take jurisdiction.

- (1) The court must order termination of the parental rights of a respondent, and must order that additional efforts for reunification of the child with the respondent must not be made, if
 - (a) the supplemental petition for termination of parental rights contains a request for termination;
 - (b) at the hearing on the supplemental petition, the court finds on the basis of clear and convincing legally admissible evidence that one or more of the facts alleged in the supplemental petition:
 - (i) are true; and
 - (ii) come within MCL 712A.19b(3)(a), (b), (c)(ii), (d), (e), (f), (g), (i), (j), (k), (l), (m), or (n);

unless the court finds by clear and convincing evidence, in accordance with the rules of evidence as provided in subrule G(2), that termination of parental rights is not in the best interests of the child. If the court concludes that the allegations of new or different circumstances are of such a nature that fairness to the respondent or the interests of justice require, the court may direct that there be a jury determination of the truth of those allegations.

- (2) Time for Hearing on Petition. The hearing on a supplemental petition for termination of parental rights under this subrule shall be held within 42 days after the filing of the supplemental petition. The court may, for good cause shown, extend the period for an additional 21 days.

(G)-(J) [Unchanged.]

Staff Comment: On February 4, 2003, the Supreme Court adopted an overall revision of the rules governing proceedings involving juveniles, to be effective May 1, 2003. Among that set of rules are new MCR 3.973, 3.974, 3.975, and 3.977, which govern dispositional hearings and subsequent reviews in child protective proceedings, including those involving requests for termination of parental rights. Under the new rules, proceedings on supplemental petitions alleging additional abuse and neglect are treated as a continuation of the dispositional phase, i.e., the rules of evidence do not apply (except where a supplemental petition seeks termination of parental rights based on changed circumstances), and there is no right to a jury.

The proposals published for comment in this order would modify those procedures. There are two versions. Alternative A would require that the allegations of additional abuse or neglect be established by legally admissible evidence. Alternative B would include that requirement, and, in addition, would give the court the discretion to order a jury trial on the new allegations if they are of such a nature that fairness to the respondent or the interests of justice require.

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.

A copy of this order will be given to the secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by May 1, 2003, P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2003-07. Your comments and the comments of others will be posted at www.courts.michigan.gov/supremecourt.